IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 260 OF 1977

The State of Maharashtra,
through the Special Land Acquisition
Officer, Minor Irrigation. ... Appellant.

Versus.

Gopal Hari Bhide,
(Since deceased through LRs.)
1A. Smt.Rukmini Gopal Bhide.
1B. Yeshwant Gopal Bhide.
1C. Smt.Vimal Gopal Bhide.
1D. Anant Gopal Bhide.
1E. Sudhakar Gopal Bhide.
1F. Sou.Vrushabha Ramesh Kulkarni.
1G. Madhav Gopal Bhide. ... Respondents

FIRST APPEAL NO. 261 OF 1977
WITH
CROSS OBJECTION

State of Maharashtra
through the Special Land
Acquisition Officer. ... Appellant.

Versus.

1. Parshuram Pandurang Bhide.
2. Padmakar Pandurang Bhide.
3. Prabhakar Pandurang Bhide. ... Respondents.

AND

FIRST APPEAL NO. 262 OF 1977
WITH
CROSS OBJECTION

State of Maharastra
through the Special Land
Acquisition Officer. ... Appellant.

Versus.

1. Krishnaji Vishnu Bhide
   (since deceased through LRs.)
   1A) Indira w/o.Krishnaji Bhide
   R/at & Po: Panvel, Dist.Kulaba.

1B) Narayan s/o.Krishnaji Bhide
(since deceased through LRs.)
1B-1) Meera Vivek Ranade.
1B-2) Rashmi Ramakant Mankane
1B-3) Gauri Mahesh Datar.
1B-4) Pradnya Pravin Joshi.
1B-5) Laxmi Narayan Bhide.
R/at & Po: Panvel, Kulaba.
1C) Sitaram Krishnaji Bhide.
R/at & Po: Panvel, Kulaba.
1D) Vishwanath Krishnaji Bhide.
Pale Khurd, Taluka Panvel,
Dist. Kulaba.
1E) Sou.Nirmala Ramchandra Godbole.
1F) Sou.Sumati Vidhadhar Datar
R/o.Kharkar Ali, Thane.
1G) Sou.Shankuntala Prabhakar Agarkar,
R/o.Panvel, Joglekar Wada,
Near Tennis Club.

2. Govind Vishnu Bhide,
(Since deceased through LRs.)
2A) Sushila Govind Bhide.
2B) Gajanan Govind Bhide.
2C) Sou.Meena Madhukar Joglekar.
2D) Sou.Pushpa Ramchandra Damle.

3. Ganesh Vishnu Bhide.
4. Sakharam Laxman Bhide.
5. Waman Laxman Bhide.
6. Janardan Laxman Bhide.
7. Moreshwar Laxman Bhide
(Since deceased through LRs.)
7A. Janardhan Laxman Bhide,
R/at & Po: Panvel, Nichura Niwas,
Near Keshav Niwas Girls' School,
Shivaji Road, Panvel, Dist.Raigad.
7B. Madhusudan Laxman Bhide,
R/at & Po: Panvel, Near Gaondevi
Temple, Dist.Raigad.
8. Madhusudan Laxman Bhide.
9. Bhalchandra Purushottam Bhide,
(since deceased through LRs.)
9A. Smt.Shakuntalabai Bhalchandra Bhide.
10. Smt.Maltibai Vinayak Bhide.

Mrs.G.P.Mulekar, A.G.P. for the Appellant in all the appeals.

Shri G.V.Limaye for the Respondents in all the appeals.

CORAM : ABHAY S.OKA, J.

DATED : 9th February, 2007.

ORAL JUDGMENT.

1. Heard the learned Advocates appearing for the parties. It appears that Civil Applications Nos.1119 of 1998, 1120 of 1998 and 3858 of 2003 filed in First Appeal No.262 of 1977 were misplaced in the office. The said Civil Applications were filed for bringing on record the legal representatives of the deceased Respondents Nos.4, 5, and 4A respectively. By order dated 7th March 2006, this Court allowed the said Civil Applications. Before the notices to the legal representatives of the deceased Respondents could be served, the papers of the said Civil Applications were misplaced in the office. However, copies of the said Civil Applications are available. Permission is granted to the office to reconstruct the records of the said Civil Applications on the basis of the copies of the said Civil Applications. If amendment is not carried out on the basis of the said Civil Applications, the Advocate for the Appellant will do so within a period of eight weeks from the date on which papers of the Appeal are received back by the office.

2. These three Appeals along with cross- objections

can be disposed of by a common Judgment. The First Appeal No.260 of 1977 arises out of Land Acquisition Reference No.35 of 1975. The First Appeal No.261 of 1977 arises out of Land Acquisition Reference No.38 of 1975 and the First Appeal No.262 of 1977 arises out of Land Acquisition Reference No.37 of 1975. By the impugned common Judgment and Order dated 21st September 1976 the said three Land Acquisition References were decided. The proceedings of the three Land Acquisition References were clubbed together by consent of the parties. The three References relate to acquisition of land at village Karambeli Tarf Taloja in Taluka Panvel, District Raigad (at the relevant time District Kolaba). The lands were acquired for Morba Minor Irrigation Scheme of Panvel. Notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894") was issued on 17th July 1972. The notice under section 12(2) of the said Act of 1894 was served to the Claimants on 12th June 1975. The Claimants in all the three references claimed enhanced market value at the rate of Rs.4000/- per acre. The trial Court by the impugned Judgment and order held that the proper market value of the Varkas land was Rs.1600/- per acre and that of paddy land was Rs.3000/- per acre.

3. The learned Assistant Government Pleader appearing for the State invited my attention to the

findings recorded by the Reference Court as well as the evidence on record. The learned Assistant Government Pleader submitted that considering the fact that some of the acquired lands are Varkas lands and the remaining were paddy land and considering that there was no evidence led of any comparable sale instances, the trial Court committed an error in granting enhancement in the market value.

4. The learned Advocate for the original Claimants supported the impugned Judgments and Awards. He submitted that in view of the amendment to the provisions of the said Act of 1894, the Claimants are now entitled to receive statutory benefits under section 23(2) and section 28 of the said Act of 1894 as amended.

5. It will be necessary to refer to the evidence led before the Reference Court and the findings recorded by the said Court. The Land Acquisition Officer while making the award under section 18 of the said Act of 1894 fixed the market value at the rate of Rs.2000/- per acre for Kharip land and at the rate of Rs.800/- per acre for Varkas land. It seems to be an admitted position that for a period between 1947 and 1973 there have been no sale instances of sale of land from village Karambeli Tarf Taloja. In fact from the evidence led by the Claimants it appears that practically all the lands

in the village were held by the members of the family of the Claimants. It appears that in view of these peculiar facts, reliance was placed by the parties on the sale instances of the lands which are situated in adjoining villages.

6. The Claimants led evidence of one Krishnaji Vishnu Bhide. He stated that his family originally hails from village Pale-Khurd and the village in question is situated at a distance of 4 to 5 miles from village Pale-Khurd. He stated that on the acquired land crop of Nagli and Wari was being taken. He stated that there were certain trees in the acquired land. He gave details of the income fetched from the grass grown on the acquired land as well as the crop which was grown on the acquired land. He stated that the nearby area was developed by the M.I.D.C. Ltd. in the year 1972. He was extensively cross-examined on behalf of the Appellant State Government. He admitted that the villages Shiravali, Ambe Tarf, Taloje are at a distance of four Km. from village Karambeli. He admitted that he was unable to state whether the market price of varkas land in these three villages would be similar to the acquired land. The Claimants also examined one Budhya Joma Dhongre who had purchased a land having an area of 3 acres and 12 gunthas at a price of Rs.19,000/- from village Morba on 23rd March 1972. Another witness

was examined by name Balu Ragho Patil who was the Police Patil of village Karambeli. He stated that while panchanama was prepared on 30th April 1972 in respect of valuation of the lands which were to be acquired, he was present. He stated that at the time of taking possession of the acquired land, the varkas land was valued at Rs.3000/- per acre and paddy land at Rs.5000/- per acre. The Claimants in the other Land Acquisition References were also examined as witnesses. One Bapu Dinkar Patil was examined, who had purchased a land admeasuring 24 gunthas situated at village Ambhe on 12th April 1972. He stated that he purchased the said land for the price of Rs.2000/- which was at a distance of 2 to 2-1/2 miles from the acquired land. He admitted that the land purchased by him was nearer to Panvel than the acquired land. One Mahadeo Atmaram Bhoir was examined to prove sale instance dated 26th May 1972 of a land from village Shiravali. He stated that his land is nearer to Panvel than the acquired land.

7. The learned trial Judge has taken into consideration the aforesaid sale instances. The learned trial Judge referred to the sale instances in respect of the land purchased by Bapu Dinkar Patil at the price of Rs.2,000/- for 24 Gunthas. The said land was situated at village Ambhe. The said sale instance was found to be comparable to the acquired land and therefore, the

learned trial Judge recorded a finding that the price of that land of Bapu on the relevant date will be Rs.3320/- per acre. After considering the sale instances, the learned trial Judge came to the conclusion that the price of the acquired land appears to be more than Rs.800/- and Rs.2000/- per acre in respect of varkas land and kharip land respectively. After considering the said sale instances and the valuation made by the panchas, the learned trial Judge has fixed the market value at Rs.1600/- per acre for varkas land and Rs.3000 per acre for paddy land.

8. It is well settled position of law that while deciding the market value of acquired land, there is always some element of guess work or conjecture. The learned trial Judge has considered the sale instances of the lands in three villages which are around the village Karambeli and has recorded the said findings. As stated earlier in the year 1972 when the acquired land was taken over the panchas brought by the Special Land Acquisition officer valued the paddy land at Rs.5000 per acre and the varkas land at Rs.3000 per acre. The panchanama is not made by experts and therefore, the price mentioned therein cannot be relied upon.

9. If the evidence is considered in its entirety, it is obvious that the market value fixed by the learned

trial Judge is just and proper. In my view no interference is needed in so far as the fixation of the market value is concerned.

10. In the cross objections, the Respondents have claimed interest at the rate of 12% per annum. A general ground is raised that the rate of interest granted is wrong as being against the law.

11. In the present case the Award under section 11 has been made in the year 1975 i.e. before the amendment made by Act No.68 of 1984 was brought on the statute book. The amendment made by Act No.68 of 1984 was brought into force with effect from 24th March 1984. By the said amendment rate of solatium provided under sub-section (2) of section 23 of the said Act of 1894 was increased to 30%. A provision was made under section 23(1A) for payment of interest at the rate of 12% per annum on the market value from the date of publication of notification under section 4 till the date of Award of the Collector or the date of taking of possession of the land whichever is earlier. By the same amendment section 28 of the said Act of 1894 was also amended and a provision was made for payment of interest at the rate of 9% and 15% per annum. The question to be decided is whether the Claimants in these cases will be entitled to the benefit of the amended

provisions.

12. In the present case the Award under section 11 as well as Award under section 18 of the said Act of 1894 was declared much before the date on which the Land Acquisition (Amendment) Act 1984 was brought into force. In fact the award was made when the bill of the Act was placed before the House of Parliament. It is, therefore, obvious that the Claimants will not be entitled to the benefit of section 23(1A) and section 23(2) of the said Act of 1894 as amended. The Claimants will be entitled to solatium at the rate of 15% per annum which has already been granted by the impugned Judgment and order.

13. Under section 28 of the unamended Act, it was provided that if the sum which in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the amount which the Collector did award as compensation, the Award of the Court may direct that the Collector shall pay interest on such excess at the rate of 6% per annum from the date on which he took possession of the land till the date of payment of such excess. The Reference Court has declined to grant interest on the ground that the possession of the acquired land was taken on 22nd June 1975 and the Award under section 11 of the said Act of

1894 was made prior to that date. The said approach of the Reference Court is completely erroneous. The unamended section 28 contemplated interest to be awarded on enhancement granted by the Reference Court. Thus in the present case, the Claimants will be entitled to interest at the rate of 6% per annum from the date of which the possession of the acquired land was taken over till the date on which the enhanced compensation was deposited by the Appellant in the Court. The said relief will have to be granted even in case of an Appeal where cross-objection is not filed. The Claimants are entitled to the interest under section 28 as a matter of right. Therefore, power under rule 33 of Order XLI of the Code of Civil Procedure, 1908 will have to be exercised for granting the said relief.

14. Hence the following order is passed:

(a) First Appeals Nos.260 of 1977, 261 of 1977 and 262 of 1977 are dismissed. The Appellant will pay costs of the Appeals to the Respondents/Claimants.

(b) In First Appeals 260, 261 and 262 of 1977 the impugned Judgments and Awards are modified by directing that the State of Maharashtra will pay interest at the rate

of 6% p.a. on the excess amount awarded by the Reference Court from the date of taking over possession of the acquired land till the date of deposit of the excess amount in the Court.

(c) The payment of amount as per the modified award will be made by the State Government to the Claimants within a period of six months from today.

(d) Cross objections are disposed of accordingly.

(e) There will be no order as to costs in Cross Objections.

Judge.